

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JASON J. VER VALEN,

Plaintiff,

vs.

DEPARTMENT OF CORRECTIONS
and CUS L. BELANGER,

Defendants.

NO. CV-07-5069-JPH

ORDER ADOPTING REPORT AND
RECOMMENDATION AND DISMISSING
COMPLAINT

1915(g)

BEFORE THE COURT is Magistrate Judge James P. Hutton's Report and Recommendation to dismiss the complaint and count it as one of the dismissals under 28 U.S.C. § 1915(g) (Ct. Rec. 13). A copy of the Report and Recommendation was sent to Plaintiff at the Washington State Penitentiary, but returned on June 5, 2008, with the notation, "Return to Sender, Inmate committed name and DOC Number are Required." A second attempt was made to send a copy of the Report and Recommendation, but it also was returned with the notation, "Released." Plaintiff has not kept the court apprised of his present address and he has filed nothing further in this action.

Plaintiff initiated this action while a prisoner at the Washington State Penitentiary, claiming he was not released on his earned release date. Plaintiff is proceeding *pro se* and *in forma*

1 *pauperis*; Defendants have not been served.

2 In his complaint, Plaintiff failed to assert that his continued
3 confinement had been invalidated by a state court proceeding or
4 federal habeas action. See *Heck v. Humphrey*, 512 U.S. 477, 487
5 (1994); *Edwards v. Balisok*, 520 U.S. 641, 643 (1997). He did not
6 remedy this deficiency. Consequently, his claim is not presently
7 cognizable under 42 U.S.C. § 1983.

8 Accordingly, **IT IS ORDERED** the Report and Recommendation (Ct.
9 Rec. 13) is **ADOPTED IN ITS ENTIRETY** and the Complaint is **DISMISSED**
10 **without prejudice** for failure to state a claim upon which relief may
11 be granted under 28 U.S.C. §§ 1915(e)(2) and 1915A(b)(1).

12 Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a
13 prisoner who brings three or more civil actions or appeals which are
14 dismissed as frivolous or for failure to state a claim will be
15 precluded from bringing any other civil action or appeal *in forma*
16 *pauperis* "unless the prisoner is under imminent danger of serious
17 physical injury." 28 U.S.C. § 1915(g). Plaintiff is advised to read
18 the new statutory provisions under 28 U.S.C. § 1915. This dismissal
19 of Plaintiff's complaint may count as one of the three dismissals
20 allowed by 28 U.S.C. § 1915(g) and may adversely affect his ability to
21 file future claims.

22 **IT IS SO ORDERED.** The District Court Executive is directed to
23 enter this Order, forward a copy to Plaintiff at his last known
24 address, enter judgment, and close the file. The District Court
25 Executive is further directed to forward a copy of this Order to the
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1 Office of the Attorney General of Washington, Criminal Justice
2 Division.

3 **DATED** this 3rd day of July, 2008.

4 ***s/Lonny R. Suko***

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6 LONNY R. SUKO
7 UNITED STATES DISTRICT JUDGE
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